

# BLP BRIEF

## Employment Contracts in the School Workplace

March 2018

By Tyson Brennan

As a Principal, you offer employment contracts to new staff regularly, but are you content that the terms of the contract are legal, effective and properly set out your expectations for your staff?

The discussion below is not meant to be taken as strict and comprehensive legal advice, but may assist you with asking the right questions about the effectiveness of your employment contracts.

### **Employment Contracts 101**

Like any other contract, an employment contract is a binding agreement between two parties. In order to be valid, there needs to be offer and acceptance, agreed upon terms, consideration and an intention to create a legal relationship.

#### *Offer and Acceptance*

In its basic form, an employer offers a job and the employee accepts the job, giving rise to a contract.

The offer must set out the terms and conditions of the employment in order to have

been validly accepted by the prospective employee. The offer (and thus scope of the employment contract) will consist of all items and terms raised in the advertisement, position description, statement of duties, verbal terms offered by the employer, letter of offer and the formal employment contract. If a term of a contract is not agreed to at the start, it is more difficult to have that term imputed into the contract at a later date.

If an employer makes an offer of employment, that offer is open for acceptance by the prospective employee until such time as the employer's offer is revoked.

#### *Formalities*

Commonly, employment contracts will be written and signed by each party. However, a contract does not need to be in writing to be valid and enforceable. As long as there has been an offer and it has been accepted, a contract is created.

If an employee turns up for work, carries out the duties required of them and gets paid, there is a valid employment contract, although the terms of the employment contract may

not be entirely clear if the contract isn't in writing.

### *Contract Terms*

Employment contracts consist of both express terms and implied terms. The express terms are those terms written into a contract that set out what is required or expected of both parties to the agreement. Those terms may be contained within the job advertisement, position description, statement of duties, verbal terms offered by the employer, letter of offer and the formal employment contract. Implied terms are those terms which are not written into the contract and generally relate to matters of course which are implied into a contract by law, industry practice or common sense.

As an employer, it is important to ensure that any requirements or expectations you have of your employees is clearly set out in the contract, so that they are fully aware of their obligations. The clearer a term is within a contract, the more likely it is to be enforceable.

Remember also, an employer is not able to contract out of legal obligations under statute, awards or enterprise agreements. Any term that proposes to have such an effect would be unenforceable.

### **Tips for offering contracts to prospective employees**

- Ensure that the position description used when advertising the position accurately reflects requirements of the position
- Ensure a statement of duties is included in the contract
- Ensure the contract clearly sets out the salary and key conditions of employment (whether the position is

ongoing or fixed term, hours, salary, allowances, leave entitlements etc.)

- Ensure that the contract clearly sets out the other terms of employment you consider important to performance of that role within your school
- Do not make the employment contract long and difficult to read
- If you offer a fixed term contract, ensure that the circumstances permit you to do so (having regard to the *Victorian Catholic Education Multi Enterprise Agreement 2013*) and you are not breaching any of your employer obligations

### **Fixed Term Contracts for Employees**

It is also appropriate to touch on fixed term contracts at this point. Fixed term contracts can be common place in schools to manage staffing requirements whilst permanent staff are on parental leave, long service leave or sabbaticals. Such contracts allow Principals and schools to plan for educational outcomes and staffing requirements and provide stability for schools.

However, as a Principal you must be careful to ensure that you only offer fixed term contracts where appropriate. A school which maintains fixed term contracts outside the permitted circumstances may face fines and other sanctions. Principals may also be personally liable in such circumstances.

Fixed term contract must only be used when the appointment is for one of the reasons set out in the *Victorian Catholic Education Multi Enterprise Agreement 2013*.

### **Those reasons are:**

- The employee is employed to undertake a specific project or task

where funding has been made available for a specific period of time;

- The employee is employed to undertake a specific task which has a limited period of operation;
- To replace an employee on approved leave for greater than 11 weeks;
- An employee terminates their employment after the commencement of the school year or prior to the end of the school year and a replacement employee is required (note – the fixed term contract cannot extend beyond that school year)
- To avoid a redundancy situation;
- Where an employee is employed as a Primary School Principal;
- Where the employee has been issued with permission to teach from the VIT (note – the fixed term contract cannot extend beyond the permission granted).

Fixed term contract end dates should coincide with the Victorian Government gazetted term dates and school years as determined by the Victorian Government from year to year.

### **In summary**

As an employer, you should be aware of the requirements placed on employers when employing new staff.

If you have any questions about your employment contracts or would like us to

review them to ensure they are effective and compliant, we welcome you to contact us at any time.

### **How can Brennan Law Partners Assist**

If you are unsure about the terms of your employment contracts, or have a concern about a particular staff member, please feel free to contact us at any time so that we can assist you.



Tyson Brennan  
Principal

tyson.brennan@brennanlawpartners.com.au  
0434 942 550